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DEPARTMENT OF LAW OPINION NO. 72-18 (R-50)

REQUESTED BY: THE HONORABLE J. KENDALL HANSEN
Apache County Attorney

QUESTION: May a county, in drafting and adopting county subdivision rules and regulations, define the term "subdivision" other than as defined in A.R.S. § 32-2101.14?

ANSWER: No. See body of opinion.

A.R.S. § 11-806.01 is a 1971 amendment to Title 11, Chapter 6, pertaining to county planning and zoning. Section D of said statute authorizes a county board of supervisors to adopt general rules and regulations governing plats and subdivisions of lands within the county's area of jurisdiction. A.R.S. § 11-801 sets out definitions pertaining to county planning and zoning, but does not define subdivision. The question presented is whether, in view of the failure of the Legislature to specifically define the term in Chapter 6 of Title 11, the boards of supervisors are free to adopt their own definition.

When the Legislature does not define a term, the ordinary meaning of the word is applicable unless a special meaning was intended. State Tax Commission v. Peck, 106 Ariz. 394, 476 P.2d 849 (1970).

Legislative intent can be determined not only from the wording of the statute itself, but also by considering related statutes, regardless of whether the latter statutes were adopted at different times or appear in different sections of the revised statutes. If the statutes have the same purpose, they should be construed harmoniously and consistently. State v. Farley, 106 Ariz. 119, 471 P.2d 731 (1970).

Statutory subdivision controls also appear in Articles 1 and 4 of the real estate code (Chapter 20, Title 32, Arizona Revised Statutes) and Article 1 of the public health and safety code (Chapter 1, Title 36, Arizona Revised Statutes). All of the statutes involved herein are directed at the protection of the public and promotion of the orderly growth of the state. If possible, they should be construed harmoniously and consistently.

"Subdivision" is presently defined in A.R.S. § 32-2101.14 as follows:

14. "Subdivision" or "subdivided lands" means improved or unimproved land or lands divided or proposed to be divided for the purpose of sale or lease, or for cemetery purposes, whether immediate or future, into five or more lots or parcels. This paragraph shall not apply to the division or proposed division of land located in the state of Arizona into lots or parcels each of which is, or will be, thirty-six acres or more in area including to the center line of dedicated roads or easements, if any, contiguous to the lot or parcel.

Chapter 110, Laws of 1972 (Senate Bill 1067), which extensively revises the present real estate act, amends the above definition (effective August 13, 1972).

Under the authority of A.R.S. § 36-105, the State Board of Health may promulgate certain rules and regulations. A.R.S. § 36-105.B.16 states that the Board of Health may:

16. Define and prescribe reasonably necessary measures regarding the water supply, sewage disposal, and garbage collection and disposal for subdivisions. The regulations shall provide minimum sanitary facilities to be installed in the subdivision. The regulations shall provide that the plans and specifications showing or describing the water supply, sewage disposal and garbage collection facilities be submitted to the state department of health for review, and that no lots in any subdivision be offered for sale before compliance with such standards and regulations has been demonstrated by approval of the plans and specifications by the state department of health.

Under the authority of the above subsection, the State Board of Health has defined a subdivision by wording extremely similar to the real estate definition.

No county planning and zoning statute (Chapter 6, Title 11, Arizona Revised Statutes) authorizes a county to define a subdivision. The courts have been extremely chary in delineating the law-making powers of a county, stating that a county's powers are strictly derivative and dependent upon specific delegation of authority by the Legislature. In a pertinent decision, Robinson v. Lintz, 101 Ariz. 448, 420 P.2d 923 (1966), the Supreme Court held that a county board of supervisors could not require a subdivider to obtain approval of the supervisors as a condition precedent to recording a subdivision plat or map with the county recorder. The court rejected the contention that a broadly worded statute imputed such a specific power to the county.

A.R.S. § 11-806.01 delegated to the counties the specific power declared lacking in the Robinson case, supra, providing in part that approval of the county supervisors is a prerequisite to the filing of a subdivision plat in the office of the county recorder. The real estate statutes have long required the submission of a recorded subdivision map or plat as one of the conditions precedent to subdivision qualifications. A.R.S. § 32-2181.A. Now the plat must be approved by the county board of supervisors before it is accepted by the Real Estate Department.

It is the opinion of this office that the interrelated real estate and planning and zoning statutes must be construed together and that, in view of the lack of specific legislative delegation of the authority to define the term "subdivision", the Legislature intended that the present definition set out in the real estate statutes be utilized by the counties in adopting subdivision rules and regulations.

Respectfully submitted,

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J.S.

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